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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,950	03/29/2007	Thomas Nissl	047956/307840	7925

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EXAMINER

MILLER, CHERYL L

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,950	Applicant(s) NISSL ET AL.	
	Examiner CHERYL MILLER	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 and 4-21 have been considered but are moot in view of the new ground(s) of rejection. New rejections have been issued and thus the current rejection is considered non-final.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 4-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 line 17 requires each of the struts to be "substantially parallel" to one another in the initial state. This is considered new matter as "substantially parallel" was not found in the specification. Figure 1 supports the struts being parallel in the initial state. Substantially parallel however, is broader than parallel and could mean somewhat parallel or somewhat aligned. Applicants figure seemingly shows support for only parallel and not substantially parallel. It is suggested to delete the term "substantially" from the claim as it is considered new matter. Deletion of the term "substantially" would overcome the new matter rejection. The claims containing the term "substantially" may be interpreted much broader and may be rejectable over

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Burgermeister (see below) as the struts of Burgermeister are "substantially" parallel. Claims 4-20 and 22 depend upon claim 1 and inherit all problems associated with the claim.

Claim 21 line 9 requires each annular segment to have the same amplitude. This is considered new matter. Support for such language was not found in the specification. Further, support for the annular segments having the same amplitude does not seem to be provided by the figures. The annular segments comprise a plurality of struts and transition sections, the amplitude at different portions of each individual annular segments differs circumferentially (the widened head heads and deflection elements provide greater amplitudes at these locations). It seems applicant was trying to claim instead that all struts has the same amplitude/length (instead of the annular segments). Such an amendment would overcome the new matter rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-7, 9-23 rejected under 35 U.S.C. 102(e) as being anticipated by Burgermeister (US 2005/0004657 A1, cited previously). Referring to the claim 1 grouping, Burgermeister discloses a stent (see figs.4-5; middle of stent is shown, however as stent appears to be a repeated pattern, it is assumed the ends will have the same configuration) comprising annular segments coupled by connectors (250), the annular segments having struts (210, 220)

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and transition sections (peaks, valleys, bends), every other transition section having a wider head end than an adjacent transition section (see fig.5), the widened head ends having the claimed shape to intermesh with adjacent sections (fig.5; initial state), the struts (210, 220) considered to be *substantially* parallel to one another. If applicant were to claim parallel instead of substantially parallel, this would seemingly overcome the Burgermeister rejection.

Referring to claim 21, Burgermeister's stent has a repeated pattern thus each annular segment will have the same amplitude (although the amplitude of the struts vary circumferentially along one annular segment, this is not what is claimed, instead the annular segments are claimed to have the same amplitude to one another). If applicant were to claim that all struts have the same length/amplitude, this would seemingly over the Burgermeister rejection.

Referring to claim 23, Burgermeister's openings within the transition sections in the initial state (see fig.5) form "eyelets" thus may be considered deflection elements.

Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Harrison (US 2002/0123791 A1). Harrison a stent (see figs.4-5a) comprising annular segments (12) coupled by connectors (13), the annular segments having struts (straight segments) and transition sections (peaks, valleys, bends 21, 22, 23), every other transition section having a widened head end (23) the widened head ends having the claimed shape (fig.5) to intermesh with adjacent sections in the initial state (see fig.5a, capable or intermeshing abutment), and deflection elements having eyelets (inside transition 23, when compressed in initial state comprises an "eyelet"). In figure 4, the top annular segment (12) is considered the proximal end and the bottom annular segment (12) is considered the distal end. The widened head ends (23) are at both the proximal and distal

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ends of the stent. The widened head ends extend distally from the proximal end and distally from the distal end (however they have an extension that extends proximally and distal from each individual end). If applicant were to claim the widened heads end to extend proximally *from* (instead of *at*) the proximal end and distally *from* (instead of *at*) the distal end, this would seemingly overcome the Harrison rejection

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHERYL MILLER whose telephone number is (571)272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached at 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cheryl Miller/

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Examiner, Art Unit 3738

/Corrine M McDermott/

Supervisory Patent Examiner, Art Unit 3738